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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

ANDREA MORROW, on behalf of	)	Case No.
herself and all others similarly situated,	)	
	)	<b><u>CLASS ACTION</u></b>
Plaintiff,	)	
	)	<b>COMPLAINT FOR VIOLATIONS</b>
vs.	)	<b>OF:</b>
	)	
COMMERCIAL TRADE, INC.,	)	1. VIOLATIONS OF
	)	ELECTRONIC FUNDS
Defendants.	)	TRANSFER ACT [15 U.S.C.
	)	§1693 ET SEQ.]
	)	
	)	<b><u>DEMAND FOR JURY TRIAL</u></b>
	)	

Plaintiff ANDREA MORROW (“Plaintiff”), on behalf of herself and all others similarly situated, alleges the following against Defendant COMMERCIAL TRADE, INC. upon information and belief based upon personal knowledge:

**NATURE OF THE CASE**

1. Plaintiff’s Complaint is brought pursuant to the Electronic Funds Transfer Act, 15 U.S.C. 1693 et seq. (“EFTA”).

1           2.     Plaintiff, individually, and on behalf of all others similarly situated,  
2 brings this Complaint for damages, injunctive relief, and any other available  
3 legal or equitable remedies, resulting from the illegal actions of Defendant  
4 debiting Plaintiff's and also the putative Class members' bank accounts on a  
5 recurring basis without obtaining a written authorization signed or similarly  
6 authenticated for preauthorized electronic fund transfers from Plaintiffs' and  
7 also the putative Class members' accounts, thereby violating Section 907(a) of  
8 the EFTA, 15 U.S.C. § 1693e(a), and Section 205.10(b) of Regulation E, 12  
9 C.F.R. § 205.10(b). Plaintiff alleges as follows upon personal knowledge as to  
10 herself and her own acts and experiences, and, as to all other matters, upon  
11 information and belief, including investigation conducted by her attorneys.  
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15

### 16                               **JURISDICTION & VENUE**

17           3.     This Court has jurisdiction under 28 U.S.C. 1331, because this action  
18 is brought pursuant to the EFTA, 15 U.S.C. 1693 *et seq.*  
19

20           4.     Jurisdiction of this Court arises pursuant to 15 U.S.C. 1693(m),  
21 which states that, "without regard to the amount in controversy, any action  
22 under this section may be brought in any United States district court."  
23

24           5.     Venue and personal jurisdiction in this District are proper pursuant to  
25 28 U.S.C. 1391(b) because Plaintiff resides within this District, Plaintiff is a  
26 resident of California, and Defendant does or transacts business within this  
27  
28

1 District, and a substantial portion of the events giving rise to Plaintiff's claims  
2 took place in this judicial district.

3  
4 **PARTIES**

5 6. Plaintiff is a natural person residing in Santa Clara County,  
6 California.

7 7. Defendant is a collection agency headquartered in California and is  
8 engaged in the collection of debt within the State of California  
9

10 8. Within the last year, Defendant attempted to collect consumer debts  
11 from Plaintiff.  
12

13 9. During the course of its attempts to collect debts allegedly owed to  
14 third parties, Defendant sends to alleged debtors bills, statements, and/or other  
15 correspondence, via the mail and/or electronic mail, and initiates contact with  
16 alleged debtors via various means of telecommunication, such as by telephone  
17 and facsimile.  
18  
19

20 10. Defendant acted through its agents, employees, officers, members,  
21 directors, heirs, successors, assigns, principals, trustees, sureties, subrogees,  
22 representatives, and insurers.  
23

24 **FACTUAL ALLEGATIONS**

25  
26 11. On or about September 22, 2014, Defendant began contacting  
27 Plaintiff in attempt to collect a consumer debt from Plaintiff in connection with  
28

1 an unsatisfied judgment against Plaintiff.

2 12. On or about November 5, 2014, Defendant sent Plaintiff a statement  
3 regarding her alleged outstanding debt for the account number ending in -9261.  
4

5 13. Plaintiff paid several payments of \$125.00 towards the principal  
6 amount.  
7

8 14. Defendant continued to charge Plaintiff recurring payments of  
9 \$125.00 and debited the payments from her account.  
10

11 15. Defendant did not provide to Plaintiff, nor did Plaintiff execute, any  
12 written or electronic writing memorializing or authorizing the recurring or  
13 automatic payments.  
14

15 16. Plaintiff did not provide Defendant either with a written or an  
16 electronic signature authorizing the recurring or automatic payments.  
17

18 17. Although Plaintiff wishes recurring electronic payments to cease,  
19 Defendant has continued to draw unauthorized amounts on a recurring basis  
20 from Plaintiff's checking account.  
21

22 18. Because of the foregoing, Plaintiff has continued to have the  
23 unauthorized amounts electronically drawn from her personal checking  
24 account, has repeatedly been placed in jeopardy of incurring overdraft penalties  
25 and fees with her bank, and has risked adverse entries on her credit report and  
26 financial history as a result of Defendant's unauthorized acts.  
27  
28

**CLASS ALLEGATIONS**

19. Plaintiff brings this action on behalf of herself and all others similarly situated, as a member of the proposed class (hereafter “The Class”) defined as follows:

All persons in the United States whose bank accounts were debited on a reoccurring basis by Defendant without Defendant obtaining a written authorization signed or similarly authenticated for preauthorized electronic fund transfers within the one year prior to the filing of this Complaint.

20. Plaintiff represents, is a member of, The Class, consisting of all persons within the United States whose bank account was debited on a recurring basis by Defendant without Defendant obtaining a written authorization signed or similarly authenticated for preauthorized electronic fund transfers within the one year prior to the filing of this Complaint.

21. Defendant, its employees and agents are excluded from The Class. Plaintiff does not know the number of members in The Class, but believes the Class members number in the thousands, if not more. Thus, this matter should be certified as a Class Action to assist in the expeditious litigation of the matter.

22. The Class is so numerous that the individual joinder of all of its members is impractical. While the exact number and identities of The Class

1 members are unknown to Plaintiff at this time and can only be ascertained  
2 through appropriate discovery, Plaintiff is informed and believes and thereon  
3 allege that The Class includes thousands of members. Plaintiff alleges that The  
4 Class members may be ascertained by the records maintained by Defendant.  
5

6 23. This suit is properly maintainable as a class action pursuant to Fed. R.  
7 Civ. P. 23(a) because the Class is so numerous that joinder of the Class members  
8 is impractical and the disposition of their claims in the class action will provide  
9 substantial benefits both to the parties and to the Court.  
10

11 24. There are questions of law and fact common to the Class affecting the  
12 parties to be represented. The questions of law and fact to the Class predominate  
13 over questions which may affect individual Class members and include, but are  
14 not necessarily limited to, the following:  
15

16 a. The members of the Class entered into oral agreements with  
17 Defendant to have automatic, or recurring, electronic payments  
18 drawn from their personal accounts to be paid to Defendant towards  
19 settlement of the Class members' outstanding accounts with  
20 Defendant.  
21

22 b. The members of the Class were not provided with, nor did  
23 they execute, written agreements memorializing the automatic or  
24 recurring electronic payments.  
25  
26  
27  
28

1 c. Defendant did not request, nor did it provide, Class members  
2 with written agreements memorializing the automatic or recurring  
3 electronic payments.  
4

5 d. The members of the Class did not provide either a written  
6 (“wet”) or otherwise electronic signature authorizing the automatic  
7 or recurring electronic payments.  
8

9 e. Despite not providing written or electronic authorization for  
10 payments to be drawn from their accounts, Defendant took  
11 unauthorized payments from Class members’ accounts.  
12

13 f. The unauthorized payments taken by Defendant frequently  
14 subjected Class members to non-sufficient funds (“NSF”) fees,  
15 penalties, and other charges to be incurred by the Class members at  
16 their respective financial and banking institutions, as well as  
17 negative reporting to Class members’ credit histories, with serious  
18 adverse consequences to the Class members’ credit-worthiness.  
19  
20  
21

22 25. As persons whose bank accounts were debited on a reoccurring basis  
23 by Defendant without Defendant obtaining a written authorization signed or  
24 similarly authenticated for preauthorized electronic fund transfers, Plaintiffs are  
25 asserting claims that are typical of The Class.  
26

27 26. Plaintiff will fairly and adequately protect the interests of the members  
28

1 of The Class. Plaintiff has retained attorneys experienced in the prosecution of  
2 class actions.

3 27. A class action is superior to other available methods of fair and  
4 efficient adjudication of this controversy, since individual litigation of the claims  
5 of all Class members is impracticable. Even if every Class member could afford  
6 individual litigation, the court system could not. It would be unduly burdensome  
7 to the courts in which individual litigation of numerous issues would proceed.  
8 Individualized litigation would also present the potential for varying, inconsistent,  
9 or contradictory judgments and would magnify the delay and expense to all  
10 parties and to the court system resulting from multiple trials of the same complex  
11 factual issues. By contrast, the conduct of this action as a class action presents  
12 fewer management difficulties, conserves the resources of the parties and of the  
13 court system, and protects the rights of each Class member.  
14

15 28. The prosecution of separate actions by individual Class members  
16 would create a risk of adjudications with respect to them that would, as a practical  
17 matter, be dispositive of the interests of the other Class members not parties to  
18 such adjudications or that would substantially impair or impede the ability of such  
19 non-party Class members to protect their interests.  
20

21 29. Defendant has acted or refused to act in respects generally applicable to  
22 The Class, thereby making appropriate final and injunctive relief with regard to  
23  
24  
25  
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28



1 the members of the Class as a whole.

2 30. Defendant failed to comply with the writing and notice requirements of  
3 § 907(a) of the EFTA, 15 U.S.C. § 1693e(a) as to the Class members with respect  
4 to the above alleged transactions.  
5

6 31. Section 907(a) of the EFTA, 15 U.S.C. §1693e(a), provides that a  
7 “preauthorized electronic fund transfer from a consumer’s account may be  
8 authorized by the consumer only in writing, and a copy of such authorization  
9 shall be provided to the consumer when made.”  
10

11 32. Section 903(9) of the EFTA, 15 U.S.C. § 1693a(9), provides that the  
12 term “preauthorized electronic fund transfer” means “an electronic fund transfer  
13 authorized in advance to recur at substantially regular intervals.”  
14

15 33. Section 205.10(b) of Regulation E, 12 C.F.R. § 205.10(b), provides that  
16 “[p]reauthorized electronic fund transfers from a consumer’s account may be  
17 authorized only by a writing signed or similarly authenticated by the consumer.  
18 The person that obtains the authorization shall provide a copy to the consumer.”  
19

20 34. Section 205.10(b) of the Federal Reserve Board's Official Staff  
21 Commentary to Regulation E, 12 C.F.R. § 205.10(b), Supp. I, provides that “[t]he  
22 authorization process should evidence the consumer’s identity and assent to the  
23 authorization.” *Id.* at ¶10(b), comment 5. The Official Staff Commentary further  
24 provides that “[a]n authorization is valid if it is readily identifiable as such and  
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1 the terms of the preauthorized transfer are clear and readily understandable.” *Id.*  
2 at ¶10(b), comment 6.

3  
4 35. In multiple instances, Defendant debited bank accounts of the Class  
5 members on a recurring basis without obtaining a written authorization signed or  
6 similarly authenticated by the respective Class members for preauthorized  
7  
8 electronic fund transfers from the accounts of the respective Class members,  
9 thereby violating § 907(a) of the EFTA, 15 U.S.C. § 1693e(a), and Section  
10 205.10(b) of Regulation E, 12 C.F.R. § 205.10(b).  
11

12 36. In multiple instances, Defendant debited Class members’ bank  
13 accounts on a recurring basis without providing a copy of a written authorization  
14  
15 signed or similarly authenticated by the respective Class members for  
16 preauthorized electronic funds transfers, thereby violating Section 907(a) of the  
17  
18 EFTA, 15 U.S.C. § 1693e(a), and Section 205.10(b) of Regulation E, 12 C.F.R. §  
19 205.10(b).  
20

21 37. Pursuant to Fed. R. Civ. P. 23, a class action is appropriate and  
22 preferable because, on information and belief, the putative class consists of  
23  
24 hundreds, if not thousands, of individuals and is so numerous that joinder of all  
25  
26 putative class members, whether otherwise required or permitted, is  
27 impracticable. The actual number of putative class members is in the exclusive  
28 control of Defendant.

1 38. Pursuant to Fed. R. Civ. P. 23, a class action is appropriate and  
2 preferable, because Plaintiff will fairly and adequately protect the interests of the  
3 Class and Plaintiff has hired counsel able and experienced in class action  
4 litigation.  
5

6 39. Pursuant to Fed. R. Civ. P. 23(b)(3), class certification is appropriate  
7 because this Court and the parties would enjoy economies in litigating common  
8 issues on a class-wide basis instead of a repetitive individual basis.  
9

10 40. Pursuant to Fed. R. Civ. P. 23(b)(3), class certification is appropriate  
11 because the size of each putative class member's actual damages is too small to  
12 make individual litigation an economically viable option.  
13

14 41. Pursuant to Fed. R. Civ. P. 23(b)(3), class certification is appropriate  
15 because no unusual difficulties will likely occur in the management of the Class  
16 as all questions of law or fact to be litigated at the liability stage are common to  
17 the putative class and all compensatory relief is concomitant with a liability  
18 finding and can be calculated by automated and objective means.  
19

20 42. The size and definition of the Class can be identified through  
21 Defendant's records and/or Defendant's agents' records.  
22

### 23 **FIRST CAUSE OF ACTION**

#### 24 **Violations of the Electronic Funds Transfer Act**

#### 25 **15 U.S.C. §1693 et seq.**

26 43. Section 907(a) of the EFTA, 15 U.S.C. §1693e(a), provides that a  
27  
28

1 “preauthorized electronic fund transfer from a consumer’s account may be  
2 authorized by the consumer only in writing, and a copy of such authorization  
3 shall be provided to the consumer when made.”  
4

5 44. Section 903(9) of the EFTA, 15 U.S.C. § 1693a(9), provides that the  
6 term “preauthorized electronic fund transfer” means “an electronic fund transfer  
7 authorized in advance to recur at substantially regular intervals.”  
8

9 45. Section 205.10(b) of Regulation E, 12 C.F.R. § 205.10(b), provides that  
10 “[p]reauthorized electronic fund transfers from a consumer’s account may be  
11 authorized only by a writing signed or similarly authenticated by the consumer.  
12 The person that obtains the authorization shall provide a copy to the consumer.”  
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15 46. Section 205.10(b) of the Federal Reserve Board's Official Staff  
16 Commentary to Regulation E, 12 C.F.R. § 205.10(b), Supp. I, provides that “[t]he  
17 authorization process should evidence the consumer’s identity and assent to the  
18 authorization.” *Id.* at ¶10(b), comment 5. The Official Staff Commentary further  
19 provides that “[a]n authorization is valid if it is readily identifiable as such and  
20 the terms of the preauthorized transfer are clear and readily understandable.” *Id.*  
21 at ¶10(b), comment 6.  
22  
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24

25 47. In multiple instances, Defendant has debited Plaintiff’s and also the  
26 putative Class members’ bank accounts on a recurring basis without obtaining a  
27 written authorization signed or similarly authenticated for preauthorized  
28

1 electronic fund transfers from Plaintiffs' and also the putative Class members'  
2 accounts, thereby violating Section 907(a) of the EFTA, 15 U.S.C. § 1693e(a),  
3 and Section 205.10(b) of Regulation E, 12 C.F.R. § 205.10(b).  
4

5 48. In multiple instances, Defendant has debited Plaintiffs' and also the  
6 putative Class members' bank accounts on a recurring basis without providing a  
7 copy of a written authorization signed or similarly authenticated by Plaintiff or  
8 the putative Class members for preauthorized electronic fund transfers, thereby  
9 violating Section 907(a) of the EFTA, 15 U.S.C. § 1693e(a), and Section  
10 205.10(b) of Regulation E, 12 C.F.R. § 205.10(b).  
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14

15 **PRAYER FOR RELIEF**

16 WHEREFORE, Plaintiff requests judgment against Defendant for the following:

- 17
- 18 1. That this action be certified as a class action on behalf of The Class and  
19 Plaintiffs be appointed as the representative of The Class;  
20
  - 21 2. Statutory damages of \$1,000.00, per Class Member, pursuant to the  
22 Electronic Fund Transfer Act, §916(a)(2)(A);  
23
  - 24 3. Actual damages;  
25
  - 26 4. Costs and reasonable attorneys' fees pursuant to the Electronic Fund  
27 Transfer Act, §916(a)(3);  
28
  5. For prejudgment interest at the legal rate; and

1 6. Any other relief this Honorable Court deems appropriate.  
2

3 Respectfully Submitted this 23<sup>rd</sup> day of July, 2015.  
4

5 LAW OFFICES OF TODD M. FRIEDMAN, P.C.  
6

7 By: /s/ Todd M. Friedman  
8 Todd M. Friedman  
9 Law Offices of Todd M. Friedman  
10 Attorney for Plaintiff  
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